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FORD MOTOR COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

FORD MOTOR CREDIT COMPANY, LLC, a
Delaware Limited Liability Company,

Plaintiff,

vs.

LEWIS FAMILY ENTERPRISES, INC., dba
BOB LEWIS LINCOLN MERCURY, a
California corporation, and STEVEN
ROBERT LEWIS, an individual,

Defendants.

Case No.: C 07-03301 RS

**FORD MOTOR COMPANY'S
ANSWER TO COUNTERCLAIM OF
LEWIS FAMILY ENTERPRISES, INC.
AND STEVEN ROBERT LEWIS**

Judge: Richard Seeborg
Complaint Date: June 22, 2007
Trial Date: not set

LEWIS FAMILY ENTERPRISES, INC., dba
BOB LEWIS LINCOLN MERCURY, a
California corporation, and STEVEN
ROBERT LEWIS, an individual,

Counterclaimants,

vs.

FORD MOTOR CREDIT COMPANY, LLC, a
Delaware Limited Liability Company; FORD
MOTOR COMPANY, a Delaware corporation;
CAPITOL EXPRESSWAY FORD, INC., a
Delaware corporation,

Counter-defendants.

1 FORD MOTOR COMPANY, a Delaware Corporation, ("Ford") admits and denies the
2 allegations in the Counterclaims filed against it by Lewis Family Enterprises, Inc. and Robert
3 Lewis as follows:

4 **JURISDICTION AND VENUE**

- 5 1. Ford admits the allegations contained in paragraph 1 of the Counterclaim.
6 2. Ford admits the allegations contained in paragraph 2 of the Counterclaim.

7 **PARTIES**

8 3. Ford admits the allegations contained in paragraph 3 of the Counterclaim.
9 4. Ford admits that it operates a Dealer Development Program which provides for
10 partial capitalization for the acquisition of Ford Motor Company franchised dealerships to
11 qualified prospective dealer applicants who lack only adequate capital. Ford admits that through
12 the Dealer Development Program, Ford holds preferred stock in certain Lincoln Mercury
13 dealerships. Ford admits that under the Dealer Development Program a dealer redeems the
14 preferred stock held by Ford with the use of dealership profits. Except as admitted, Ford denies
15 the remaining allegations set forth in paragraph 4 of the Counterclaim.

16 5. Ford admits that Ford Motor Credit Company, LLC is a Delaware Limited
17 Liability Company headquartered in Dearborn, Michigan and that it is a wholly owned subsidiary
18 of Ford Motor Company and that it offers wholesale financing to Ford's automotive dealers.
19 Except as admitted, Ford denies the remaining allegations set forth in paragraph 5 of the
20 Counterclaim.

21 6. Ford admits the allegations contained in paragraph 6 of the Counterclaim.
22 7. Ford has insufficient information to either admit or deny the allegations contained
23 in paragraph 7 of the Counterclaim and on that basis denies each of the allegations contained
24 therein.

25 8. Ford admits the allegations contained in paragraph 8 of the Counterclaim.

26 9. Ford asserts that paragraph 9 of the Counterclaim does not contain any factual
27 allegation. Ford also asserts that federal pleadings do not provide for the naming of Doe

1 Defendants. To the extent that paragraph 9 of the Counterclaim does contain a factual allegation
2 Ford denies all facts therein.

3 **GENERAL ALLEGATIONS**

4 10. Ford admits the allegations contained in paragraph 10 of the Counterclaim.

5 11. Ford has insufficient information to either admit or deny the allegations contained
6 in paragraph 11 of the Counterclaim and on that basis denies each of the allegations contained
7 therein.

8 12. Ford has insufficient information to either admit or deny the allegations contained
9 in paragraph 12 of the Counterclaim and on that basis denies each of the allegations contained
10 therein.

11 **A. FORD'S DEALERSHIP CONSOLIDATION/REDUCTION PROGRAM**

12 13. Ford has insufficient information to either admit or deny the allegations contained
13 in paragraph 13 of the Counterclaim and on that basis denies each of the allegations contained
14 therein.

15 14. Ford has insufficient information to either admit or deny the allegations contained
16 in paragraph 14 of the Counterclaim and on that basis denies each of the allegations contained
17 therein.

18 15. Ford has insufficient information to either admit or deny the allegations contained
19 in paragraph 15 of the Counterclaim and on that basis denies each of the allegations contained
20 therein.

21 16. Ford has insufficient information to either admit or deny the allegations contained
22 in paragraph 16 of the Counterclaim and on that basis denies each of the allegations contained
23 therein.

24 **B. THE RELOCATION OF THE BOB LEWIS DEALERSHIP**

25 17. Ford has insufficient information to either admit or deny the allegations contained
26 in paragraph 17 of the Counterclaim and on that basis denies each of the allegations contained
27 therein.

1 18. Ford has insufficient information to either admit or deny the allegations contained
2 in paragraph 18 of the Counterclaim and on that basis denies each of the allegations contained
3 therein.

4 19. Ford has insufficient information to either admit or deny the allegations contained
5 in paragraph 19 of the Counterclaim and on that basis denies each of the allegations contained
6 therein.

7 20. Ford has insufficient information to either admit or deny the allegations contained
8 in paragraph 20 of the Counterclaim and on that basis denies each of the allegations contained
9 therein.

10 **C. THE CORPORATION'S SALES OUT OF TRUST CONDITION**

11 21. Ford has insufficient information to either admit or deny the allegations contained
12 in paragraph 21 of the Counterclaim and on that basis denies each of the allegations contained
13 therein.

14 22. Ford has insufficient information to either admit or deny the allegations contained
15 in paragraph 22 of the Counterclaim and on that basis denies each of the allegations contained
16 therein.

17 23. Ford has insufficient information to either admit or deny the allegations contained
18 in paragraph 23 of the Counterclaim and on that basis denies each of the allegations contained
19 therein.

20 24. Ford has insufficient information to either admit or deny the allegations contained
21 in paragraph 24 of the Counterclaim and on that basis denies each of the allegations contained
22 therein.

23 25. Ford has insufficient information to either admit or deny the allegations contained
24 in paragraph 25 of the Counterclaim and on that basis denies each of the allegations contained
25 therein.

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D. THE SALE OF THE BOB LEWIS DELAERSHIP

26. Ford has insufficient information to either admit or deny the allegations contained in paragraph 26 of the Counterclaim and on that basis denies each of the allegations contained therein.

27. Ford has insufficient information to either admit or deny the allegations contained in paragraph 27 of the Counterclaim and on that basis denies each of the allegations contained therein.

28. Ford has insufficient information to either admit or deny the allegations contained in paragraph 28 of the Counterclaim and on that basis denies each of the allegations contained therein.

29. Ford has insufficient information to either admit or deny the allegations contained in paragraph 29 of the Counterclaim and on that basis denies each of the allegations contained therein.

30. Ford has insufficient information to either admit or deny the allegations contained in paragraph 30 of the Counterclaim and on that basis denies each of the allegations contained therein.

31. Ford has insufficient information to either admit or deny the allegations contained in paragraph 31 of the Counterclaim and on that basis denies each of the allegations contained therein.

32. Ford has insufficient information to either admit or deny the allegations contained in paragraph 32 of the Counterclaim and on that basis denies each of the allegations contained therein.

33. Ford has insufficient information to either admit or deny the allegations contained in paragraph 33 of the Counterclaim and on that basis denies each of the allegations contained therein.

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34. Ford has insufficient information to either admit or deny the allegations contained in paragraph 34 of the Counterclaim and on that basis denies each of the allegations contained therein.

35. Ford has insufficient information to either admit or deny the allegations contained in paragraph 35 of the Counterclaim and on that basis denies each of the allegations contained therein.

36. Ford has insufficient information to either admit or deny the allegations contained in paragraph 36 of the Counterclaim and on that basis denies each of the allegations contained therein.

37. Ford has insufficient information to either admit or deny the allegations contained in paragraph 37 of the Counterclaim and on that basis denies each of the allegations contained therein.

38. Ford has insufficient information to either admit or deny the allegations contained in paragraph 38 of the Counterclaim and on that basis denies each of the allegations contained therein.

39. Ford has insufficient information to either admit or deny the allegations contained in paragraph 39 of the Counterclaim and on that basis denies each of the allegations contained therein.

40. Ford has insufficient information to either admit or deny the allegations contained in paragraph 40 of the Counterclaim and on that basis denies each of the allegations contained therein.

41. Ford has insufficient information to either admit or deny the allegations contained in paragraph 41 of the Counterclaim and on that basis denies each of the allegations contained therein.

42. Ford has insufficient information to either admit or deny the allegations contained in paragraph 42 of the Counterclaim and on that basis denies each of the allegations contained therein.

1 43. Ford has insufficient information to either admit or deny the allegations contained
2 in paragraph 43 of the Counterclaim and on that basis denies each of the allegations contained
3 therein.

4 44. Ford has insufficient information to either admit or deny the allegations contained
5 in paragraph 44 of the Counterclaim and on that basis denies each of the allegations contained
6 therein.

7 45. Ford has insufficient information to either admit or deny the allegations contained
8 in paragraph 45 of the Counterclaim and on that basis denies each of the allegations contained
9 therein.

10 46. Ford has insufficient information to either admit or deny the allegations contained
11 in paragraph 46 of the Counterclaim and on that basis denies each of the allegations contained
12 therein.

13 **E. VOLUNTARY RESIGNATION OF THE BOB LEWIS DEALERSHIP**

14 47. Ford has insufficient information to either admit or deny the allegations contained
15 in paragraph 47 of the Counterclaim and on that basis denies each of the allegations contained
16 therein.

17 48. Ford has insufficient information to either admit or deny the allegations contained
18 in paragraph 48 of the Counterclaim and on that basis denies each of the allegations contained
19 therein.

20 49. Ford has insufficient information to either admit or deny the allegations contained
21 in paragraph 49 of the Counterclaim and on that basis denies each of the allegations contained
22 therein.

23 50. Ford has insufficient information to either admit or deny the allegations contained
24 in paragraph 50 of the Counterclaim and on that basis denies each of the allegations contained
25 therein.

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1 51. Ford has insufficient information to either admit or deny the allegations contained
2 in paragraph 51 of the Counterclaim and on that basis denies each of the allegations contained
3 therein.

4 52. Ford has insufficient information to either admit or deny the allegations contained
5 in paragraph 52 of the Counterclaim and on that basis denies each of the allegations contained
6 therein.

7 53. Ford has insufficient information to either admit or deny the allegations contained
8 in paragraph 53 of the Counterclaim and on that basis denies each of the allegations contained
9 therein.

10 **FIRST CAUSE OF ACTION (COUNTERCLAIM)**

11 **(BREACH OF CONTRACT AS TO CAPITOL FORD AND FORD CREDIT)**

12 54. Ford realleges its responses to paragraphs 1 through 53 of the Counterclaim in
13 response to paragraph 54 of the Counterclaim.

14 55. Ford has insufficient information to either admit or deny the allegations of
15 paragraph 55 of the Counterclaim and on that basis denies each of the allegations contained
16 therein.

17 56. Ford has insufficient information to either admit or deny the allegations of
18 paragraph 56 of the Counterclaim and on that basis denies each of the allegations contained
19 therein.

20 57. Ford has insufficient information to either admit or deny the allegations of
21 paragraph 57 of the Counterclaim and on that basis denies each of the allegations contained
22 therein.

23 58. Ford has insufficient information to either admit or deny the allegations of
24 paragraph 58 of the Counterclaim and on that basis denies each of the allegations contained
25 therein.

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1 59. Ford has insufficient information to either admit or deny the allegations of
2 paragraph 59 of the Counterclaim and on that basis denies each of the allegations contained
3 therein.

4 60. Ford has insufficient information to either admit or deny the allegations contained
5 in paragraph 60 of the Counterclaim and on that basis denies each of the allegations contained
6 therein.

7 61. Ford has insufficient information to either admit or deny the allegations of
8 paragraph 61 of the Counterclaim and on that basis denies each of the allegations contained
9 therein.

10 62. Ford has insufficient information to either admit or deny the allegations contained
11 in paragraph 62 of the Counterclaim and on that basis denies each of the allegations contained
12 therein.

13 **SECOND CAUSE OF ACTION (COUNTERCLAIM)**
14 **(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING AS TO**
15 **COUNTERDEFENDANTS CAPITOL FORD, FORD, AND FORD CREDIT)**

16 63. Ford realleges its responses to paragraphs 1 through 62 of the Counterclaim in
17 response to paragraph 63 of the Counterclaim.

18 64. Ford denies the allegation contained in paragraph 64 of the Counterclaim.

19 65. Ford denies the allegation contained in paragraph 65 of the Counterclaim.

20 66. Ford denies the allegation contained in paragraph 66 of the Counterclaim.

21 67. Ford has insufficient information to either admit or deny the allegations of
22 paragraph 67 of the Counterclaim and on that basis denies each of the allegations contained
23 therein.

24 68. Ford has insufficient information to either admit or deny the allegations of
25 paragraph 68 of the Counterclaim and on that basis denies each of the allegations contained
26 therein.

27 69. Ford denies the allegation contained in paragraph 69 of the Counterclaim.

THIRD CAUSE OF ACTION (COUNTERCLAIM)
(FRAUD AS TO COUNTERDEFENDANTS CAPITOL FORD, FORD, AND FORD CREDIT)

70. Ford realleges its responses to paragraphs 1 through 69 of the Counterclaim in response to paragraph 70 of the Counterclaim.

71. Ford has insufficient information to either admit or deny the allegations of paragraph 71 of the Counterclaim and on that basis denies each of the allegations contained therein.

72. Ford has insufficient information to either admit or deny the allegations of paragraph 72 of the Counterclaim and on that basis denies each of the allegations contained therein.

73. Ford denies the allegation contained in paragraph 73 of the Counterclaim.

74. Ford denies the allegation contained in paragraph 74 of the Counterclaim.

75. Ford denies the allegation contained in paragraph 75 of the Counterclaim.

76. Ford has insufficient information to either admit or deny the allegations of paragraph 76 of the Counterclaim and on that basis denies each of the allegations contained therein.

77. Ford denies the allegation contained in paragraph 77 of the Counterclaim.

78. Ford denies the allegation contained in paragraph 78 of the Counterclaim.

FOURTH CAUSE OF ACTION (COUNTERCLAIM)
(INTENTIONAL INTERERENCE WITH CONTRACTUAL RELATIONS AS TO COUNTERDEFENDANTS FORD, AND FORD CREDIT)

79. Ford realleges its responses to paragraphs 1 through 78 of the Counterclaim in response to paragraph 79 of the Counterclaim.

80. Ford has insufficient information to either admit or deny the allegations of paragraph 80 of the Counterclaim and on that basis denies each of the allegations contained therein.

1 81. Ford denies the allegation contained in paragraph 81 of the Counterclaim.

2 82. Ford denies the allegation contained in paragraph 82 of the Counterclaim.

3 83. Ford denies the allegation contained in paragraph 83 of the Counterclaim.

4 84. Ford denies the allegation contained in paragraph 84 of the Counterclaim.

5 85. Ford denies the allegation contained in paragraph 85 of the Counterclaim.

6 **FIFTH CAUSE OF ACTION (COUNTERCLAIM)**

7 **(INTENTIONAL INTERERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
8 **AS TO COUNTERDEFENDANTS FORD, AND FORD CREDIT)**

9 86. Ford realleges its responses to paragraphs 1 through 85 of the Counterclaim in
10 response to paragraph 86 of the Counterclaim.

11 87. Ford has insufficient information to either admit or deny the allegations of
12 paragraph 87 of the Counterclaim and on that basis denies each of the allegations contained
13 therein.

14 88. Ford has insufficient information to either admit or deny the allegations of
15 paragraph 88 of the Counterclaim and on that basis denies each of the allegations contained
16 therein.

17 89. Ford denies the allegation contained in paragraph 89 of the Counterclaim.

18 90. Ford denies the allegation contained in paragraph 90 of the Counterclaim.

19 91. Ford denies the allegation contained in paragraph 91 of the Counterclaim.

20 92. Ford denies the allegation contained in paragraph 92 of the Counterclaim.

21 93. Ford has insufficient information to either admit or deny the allegations of
22 paragraph 93 of the Counterclaim and on that basis denies each of the allegations contained
23 therein.

24 94. Ford denies the allegation contained in paragraph 94 of the Counterclaim.

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SIXTH CAUSE OF ACTION (COUNTERCLAIM)
(VIOLATION OF 15 U.S.C. § 1222 AS TO COUNTERDEFENDANTS FORD, FORD
CREDIT, AND CAPITOL FORD)

95. Ford realleges its responses to paragraphs 1 through 94 of the Counterclaim in response to paragraph 95 of the Counterclaim.

96. Ford denies the allegation contained in paragraph 96 of the Counterclaim.

97. Ford denies the allegation contained in paragraph 97 of the Counterclaim.

98. Ford denies the allegation contained in paragraph 98 of the Counterclaim.

AFFIRMATIVE DEFENSES

Ford asserts the following defenses to the claims for relief pleaded against it in the Counterclaim.

FIRST AFFIRMATIVE DEFENSE
(Failure to State Claim for Relief)

Each and every claim for relief of the Counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Uncertainty)

Each and every claim for relief of the Counterclaim is vague and uncertain.

THIRD AFFIRMATIVE DEFENSE
(Privileged Acts)

Each and every claim for relief of the Counterclaim is barred because Ford's actions were privileged.

FOURTH AFFIRMATIVE DEFENSE
(Justified)

Each and every claim for relief of the Counterclaim is barred because Ford's actions were justified.

FIFTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Each and every claim for relief of the Counterclaim is barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE
(Laches)

Each and every claim for relief of the Counterclaim is barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE
(Estoppel)

Each and every claim for relief of the Counterclaim is barred by doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE
(Waiver)

Each and every claim for relief of the Counterclaim is barred by the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE
(Consent)

Each and every claim for relief of the Counterclaim is barred because Counterclaimants had knowledge of and consented to the acts of Ford, if any such acts occurred.

TENTH AFFIRMATIVE DEFENSE
(Acts of Others)

Each and every claim for relief of the Counterclaim is barred because Counterclaimants' damages, if any, were the result of Counterclaimants' own conduct or the acts of third parties.

ELEVENTH AFFIRMATIVE DEFENSE
(Comparative Fault)

Each and every claim for relief of the Counterclaim is limited by the doctrine of comparative fault.

TWELFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

Counterclaimants are bound to exercise reasonable care and diligence to avoid loss and minimize their damages, if any. Counterclaimants may not recover for losses alleged in any of their claims for relief as any such losses could have been prevented by reasonable efforts on the part of the Counterclaimants.

THIRTEENTH AFFIRMATIVE DEFENSE
(No Damages)

The Counterclaim fails to state a claim for relief because Counterclaimants have not suffered, and will not suffer, any damages as a result of any action or inaction of Ford.

FOURTEENTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

Each and every claim for relief of the Counterclaim is barred or limited by the applicable statutes of limitations, including but not limited to California Code of Civil Procedure §§ 337, 338, 340(3) and 343.

FIFTEENTH AFFIRMATIVE DEFENSE
(Set Off)

Each and every claim for relief of the Counterclaim, and the damages sought, are limited in part or in full because of set offs based on the conduct of the Counterclaimants and or claims of Ford.

SIXTEENTH AFFIRMATIVE DEFENSE
(Releases)

Each and every claim for relief in the Counterclaim is barred or limited by the releases in the contracts between the parties.

SEVENTEENTH AFFIRMATIVE DEFENSE
(No Duty)

Ford asserts that under California law it owed no duty to Counterclaimants that would give rise to a claim for negligent misrepresentation.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Plaintiff's Breach of Contract Excuses Performance)

Counterclaimants are in breach of the terms of the contracts they entered into with Ford. Counterclaimants' breach of contract is not justified and is a complete defense to any causes of action pled against Ford.

NINETEENTH AFFIRMATIVE DEFENSE
(Ford was not a Party to Contract between Counterclaimants and Ford Credit)

Ford was not a party to the creation of any contract between Counterclaimants and Ford Credit. Ford had no control over any of the terms of such contract and was not involved in any breach of such contract.

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TWENTIETH AFFIRMATIVE DEFENSE
(Ford was not a Party to Contract between Counterclaimants and Capitol Ford)

Ford was not a party to the creation of any contract between Counterclaimants and Capitol Ford. Ford had no control over any of the terms of such contract and was not involved in any breach of such contract.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(No Agency)

Co-counter defendants are not and were not agents of Ford, and Ford cannot be held responsible for the conduct of such co-defendants.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(No Liability for Conduct of Co-counter defendants)

If co-counter defendants were the agents of Ford, which they were not, their alleged misconduct was not authorized or ratified by Ford, who is not liable for such conduct.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(No Coercion)

Counterclaimants have not pleaded any acts of coercion, threats, or intimidation. Without such evidence there can be no cause of action under 15 U.S.C. § 1222.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(No Standing)

Counterclaimant, Steven Robert Lewis, does not have standing to bring a claim under 15 U.S.C. § 1222 because he is not a franchised automobile dealer.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Dealer was in Contractual Default)

Counterclaimants cannot state a claim for relief under 15 U.S.C. § 1222 because it was in breach of contract and all actions taken by Ford were authorized under its contract.

TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Reservation of Rights)

Ford currently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Ford expressly reserves its right to assert additional affirmative defenses in the event that discovery indicates other affirmative defenses would be appropriate.

WHEREFORE FORD PRAYS:

1. That the Counterclaim and each claim stated therein be denied and dismissed.
2. That Counterclaimants take nothing by reason of the Counterclaim.
3. That judgment on the Counterclaim is awarded against the Counterclaimants and in favor of Ford Motor Company.
4. That Ford Motor Company is awarded its attorneys' fees pursuant to contract.
5. That Ford Motor Company recovers its costs and expenses.
6. For such other relief as this Court deems just.

DATED: January 3, 2008

SEVERSON & WERSON
A Professional Corporation

By: /s/ Donald H. Cram, III
DONALD H. CRAM, III

Attorneys for Counterdefendant
FORD MOTOR COMPANY